File: (b) (6) – Kansas City, MO

Date: MAY 3 1 2018

In re: (b) (6)

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Scott A. Girard, Esquire

ON BEHALF OF DHS: Trisha Lacey
Assistant Chief Counsel

APPLICATION: Cancellation of removal

The respondent, a native and citizen of Kenya, appeals from the June 6, 2017, decision of the Immigration Judge denying the application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(b), and granting a period of voluntary departure under section 240B of the Act, 8 U.S.C. § 1229c.[1] The appeal will be dismissed.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge, under the "clearly erroneous" standard. 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. 8 C.F.R. § 1003.1(d)(3)(ii).

We agree with the Immigration Judge's denial of cancellation of removal based upon the determination that the respondent did not demonstrate that her return to Kenya would result in exceptional and extremely unusual hardship to her two United States citizen (USC) children, her USC stepchild, or her USC spouse (IJ at 5). *See* section 240A(b)(1)(D) of the Act. To qualify for this relief, the respondent must demonstrate that her removal will result in hardship to her qualifying relatives that is "substantially beyond" the hardship ordinarily associated with a person's ordered departure from the United States. *See Matter of Monreal*, 23 I&N Dec. 56, 60 (BIA 2001). By design, the hardship standard is a high threshold. *See Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002).

The respondent's biological children, 11 and 9 years of age at the time of the hearing, are both healthy and have no educational issues. The respondent testified that her children would go to

[1] The Immigration Judge noted in the decision that the hearing had been conducted before a different Immigration Judge on November 30, 2015, but due to a faulty recording, representatives of the parties appeared before a new Immigration Judge on January 13, 2016, to present a summary of the testimonial evidence and to make closing arguments. The Immigration Judge who conducted the hearing on January 13, 2016, indicated that he had reviewed the proffers of testimony from counsel for both parties and felt confident regarding the facts of the case (IJ at 3; Tr. at 112). 8 C.F.R. § 1240.1(b).

Kenya with her if she is ordered removed, but is concerned about the schools in Kenya because her children do not speak Swahili. She is also concerned because her children would lose contact with her husband who would remain in the United States because he is unable to obtain a passport due to child support arrearages (IJ at 4; Tr. at 41, 115). However, the record does not establish that the respondent's husband contributes financially to the family unit, so the respondent's children would not experience a lowered level of support if he remained in the United States. In addition, as noted by the Immigration Judge, the respondent's husband could join them in Kenya if he made the choice to pay his child support obligations and obtain a passport (IJ at 4). As regards the respondent's stepchild, he does not lives with the respondent. The respondent also has family members who still live in Kenya and she acknowledged that she could live with her parents if she were to return to Kenya (IJ at 5; Tr. at 130).

While we recognize the significant challenges that the respondent's removal could create for her children and her spouse, we agree with the Immigration Judge that the respondent has not met the high burden of demonstrating that her qualifying relatives face exceptional and extremely unusual hardship, that is, hardship substantially beyond that which would normally accompany removal from the United States (IJ at 5).

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

FURTHER ORDER: Pursuant to the Immigration Judge's order and conditioned upon compliance with conditions set forth by the Immigration Judge and the statute, the respondent is permitted to voluntarily depart the United States, without expense to the Government, within 60 days from the date of this order or any extension beyond that time as may be granted by the Department of Homeland Security ("DHS"). *See* section 240B(b) of the Immigration and Nationality Act, 8 U.S.C. § 1229c(b); *see also* 8 C.F.R. §§ 1240.26(c), (f). In the event the respondent fails to voluntarily depart the United States, the respondent shall be removed as provided in the Immigration Judge's order.

NOTICE: If the respondent fails to voluntarily depart the United States within the time period specified, or any extensions granted by the DHS, the respondent shall be subject to a civil penalty as provided by the regulations and the statute and shall be ineligible for a period of 10 years for any further relief under section 240B and sections 240A, 245, 248, and 249 of the Act. *See* section 240B(d) of the Act.

WARNING: If the respondent files a motion to reopen or reconsider prior to the expiration of the voluntary departure period set forth above, the grant of voluntary departure is automatically terminated; the period allowed for voluntary departure is not stayed, tolled, or extended. If the grant of voluntary departure is automatically terminated upon the filing of a motion, the penalties for failure to depart under section 240B(d) of the Act shall not apply. *See* 8 C.F.R. § 1240.26(e)(1).

WARNING: If, prior to departing the United States, the respondent files any judicial challenge to this administratively final order, such as a petition for review pursuant to section 242 of the Act, 8 U.S.C. § 1252, the grant of voluntary departure is automatically terminated, and the alternate

order of removal shall immediately take effect. However, if the respondent files a petition for review and then departs the United States within 30 days of such filing, the respondent will not be deemed to have departed under an order of removal if the alien provides to the DHS such evidence of his or her departure that the Immigration and Customs Enforcement Field Office Director of the DHS may require and provides evidence DHS deems sufficient that he or she has remained outside of the United States. The penalties for failure to depart under section 240B(d) of the Act shall not apply to an alien who files a petition for review, notwithstanding any period of time that he or she remains in the United States while the petition for review is pending. *See* 8 C.F.R. § 1240.26(i).

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